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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. LAURA ISABEL PEREZ, Defendant and Appellant.	E062063 (Super.Ct.No. FVI802625) OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Reversed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Heather M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL BACKGROUND

On December 17, 2008, defendant and appellant Laura Isabel Perez pled guilty to one count of child abuse under Penal Code[1] section 273a, subdivision (a) (count 1). In exchange, the prosecutor agreed to dismiss one count of assault by means likely to cause great bodily injury under section 245, subdivision (a) (count 2), and to a sentence of four years of probation, among other terms.

On February 6, 2009, the trial court granted defendant supervised probation for four years under various terms and conditions, including that defendant not possess or consume any alcoholic beverages or enter places where such beverages are the chief item of sale, and submit to tests at the direction of the probation officer (condition 15); participate in a counseling program as directed by the probation officer and submit monthly proof of attendance and/or successfully complete a child abuse prevention program of 52 weekly sessions (condition 24); and attend NA/AA meetings as directed by the probation officer and show proof of attendance to the probation department (condition 26).

On July 10, 2014, defendant filed a petition for dismissal; she requested that the child abuse offense be reduced to a misdemeanor under section 17, subdivision (b); she be permitted to withdraw her guilty plea; and the court dismiss the action under section 1203.4.

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[1] All statutory references are to the Penal Code unless otherwise specified.

On August 11, 2014, the probation department filed a supplemental report and reported that defendant had completed the period of probation without any new law violations or convictions. After noting that defendant was "otherwise eligible for the relief she seeks," the probation officer went on to state that the circumstances of defendant's offense were "troubling" and recommended that defendant's request be denied.

During the hearing on August 13, 2014, the court stated that "the one thing that isn't in this report is if she went to any type of parenting classes, anything to deal with anger management. There's nothing in this report indicating that's what happened." The court then referred the matter back to probation to "delineate what the defendant has done on probation, because I think that that was significant that those kinds of things were left out."

In response, the probation department submitted a further supplemental memorandum dated September 8, 2014. It stated: "On April 5, 2010, the defendant received a Child Abuse Intervention Program certificate of completion from Lighthouse Counseling Support Services. According to Probation Records she showed proof of three (3) Alcoholics Anonymous meetings, however, the defendant reported he [*sic*] completed more than three (3). In January of 2009, notes entered into Probation Records indicated the defendant was drinking and going to bars, but these allegations were never proven. The defendant also reported for a drug test which indicated a negative result."

At a hearing on September 10, 2014, the court expressed frustration that the supplemental memorandum did not specify whether the probation department ever

received proof that defendant completed the child abuse intervention program, how many alcoholics anonymous meetings defendant had been ordered to attend, and that the memorandum referred to a "he." The court ordered the matter back to probation and ordered the probation officer to appear at the next hearing.

On September 30, 2014, the probation department filed an additional supplemental memorandum. It provided further details regarding the allegations that defendant was drinking and going to bars. However, it indicated that the allegations had not been proven. The probation officer noted that defendant was not "formally violated due to the previous information," and that she "ultimately completed her grant of probation without any violations or new law violations." The memorandum did not specify whether the probation department had received proof that defendant completed the child abuse intervention program, and failed to specify whether defendant had been ordered to attend more than the three Alcoholics Anonymous meetings that their records showed she attended.

At the hearing on October 1, 2014, the trial court inquired whether defense counsel wanted to add anything. Counsel stated, "Again, your Honor, I just want to say that we're talking about something that happened six years ago." The court responded, "But after six years she still doesn't get it. She doesn't get it. That's the problem. What happens when she has a bad day?" The court then went on to deny defendant's motion. On October 6, 2014, defendant filed a timely notice of appeal.

B. FACTUAL BACKGROUND[2]

Child Protective Services referred a reported incident of child abuse to the Apple Valley Sheriff's Station. A deputy went to defendant's residence and spoke with her. Defendant initially reported that her six-year-old daughter received a bruise on her face on December 5, 2008, from being accidentally hit with a soccer ball. Defendant also stated that she slapped her daughter once and struck her daughter on the buttocks with a belt. Defendant said that she "went overboard" because the belt caused welts and she did not intend to cause welts or injury by striking her daughter.

The deputy left and interviewed the victim at school. The victim stated that she was hit by a ball and she was scared of her mother.

Defendant was arrested and read her *Miranda*[3] rights. Thereafter, defendant stated that on December 5, 2008, she was visiting a friend's house with her daughter. Her daughter and a six-year-old boy were in another room. When the friend went to check on the children, she found them with their pants down, exploring their genitals. Defendant became angry and pulled her daughter into a bathroom. Defendant slapped her daughter causing her to fall down. Defendant then punched her daughter in the face several times. Defendant stopped punching her daughter once she saw blood around her daughter's teeth and inside her mouth. Later, defendant told her daughter to lie to school officials and say she was hit by a ball, or defendant would go to jail and they would be separated.

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[2] Because this appeal only involves the court's denial of defendant's petition for dismissal, the statement of facts will be summarized from the probation report.

[3] *Miranda v. Arizona* (1966) 384 U.S. 436.

Defendant denied that she had an anger management problem, but then said that the boy was lucky she did not get her hands on him. Defendant stated that she would have caused him great bodily harm for being sexually involved with her daughter.

DISCUSSION

Section 1203.4, subdivision (a)(1) provides: "In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, . . . the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty . . . and . . . the court shall thereupon dismiss the accusations or information against the defendant."

In this case, the record on appeal shows that defendant filed her motion "on the grounds that Defendant has fulfilled the terms of probation and has paid all required fines and fees, has no subsequent record of criminal contact."

In response, the probation department reported as follows: "On August 8, 2014[,] Central Collections was contacted who confirmed the defendant has paid her fines and fees in full. . . . The zero balance was also confirmed through the Columbia Ultimate Business System (CUBS). According to the Officer Tracking System (OTS), the Jail Management System (JIMS) and the California Law Enforcement Telecommunication System (CLETS), the defendant successfully completed the period of probation without any new law violations or convictions."

The probation officer—admitting that "defendant is otherwise eligible for the relief she seeks," went on to state that she was "reluctant to grant relief at this time" because of the seriousness of the crimes defendant committed. The probation officer went on to state that "[i]t should be noted the circumstances of the offense are troubling in which the defendant held her six (6) year-old daughter on the ground by getting on top of her, and punched her several times in the face leaving noticeable bruising." Based on the facts of the underlying offense, the probation officer requested that the court deny defendant's petition. As noted above, the court denied defendant's petition based on the facts surrounding her underlying conviction. The court stated, "But after six years she still doesn't get it. . . . That's the problem. What happens when she has a bad day?"

However, "'a defendant moving under Penal Code section 1203.4 is entitled *as a matter of right* to its benefits upon a showing that he "has fulfilled the conditions of probation for the entire period of probation." It was apparently intended that when a defendant has satisfied the terms of probation, the trial court should have no discretion but to carry out its part of the bargain with the defendant. [Citation.] "The expunging of the record of conviction is, in essence, a form of legislatively authorized certification of complete rehabilitation based on a prescribed showing of exemplary conduct during the entire period of probation."'" (*People v. Smith* (2014) 227 Cal.App.4th 717, 724-725.)

Here, even the probation officer acquiesced that "defendant is otherwise eligible for the relief she seeks." The probation officer, however, recommended denying defendant's petition solely based on the disturbing facts of the underlying conviction. Although we agree with the officer that the behavior of defendant was quite disturbing,

nothing in section 1203.4 allows a court to deny a petition based on the facts of the underlying conviction.

Notwithstanding the uncontradicted evidence that defendant successfully completed her probation and complied with the terms and conditions of her probation, the People argue that we should remand this case to the trial court instead of reversing the court's order. The People contend a remand is necessary "[b]ecause the record does not disclose how many alcoholics anonymous meetings [defendant] was ordered by probation to attend or how many she actually attended." We disagree.

Here, after the probation officer wrote on her first recommendation that defendant had complied with the terms of probation, the trial court on two separate occasions asked the probation officer to clarify whether defendant had complied with the terms of her probation. Although the probation officer had two opportunities to provide evidence to the contrary, she did not. In fact, the probation officer twice stated in her August 11 and September 30 reports that defendant had "completed the period of probation without any new law violations or convictions" and that she had "ultimately completed her grant of probation without any violations or new law violations." These statements by the probation officer clearly indicate that defendant complied with the terms of her probation—including the term that she attend Alcoholic Anonymous, as ordered by probation. Furthermore, as noted above, the trial court did not base its decision on any alleged violation of probation or on any lack of information regarding probation violations. Instead, the court denied the motion based on the facts surrounding defendant's offenses.

In sum, the record on appeal supports defendant's representation in her application for relief under section 1203.4, that she "has fulfilled the terms of probation and has paid all required fines and fees, [and] has no subsequent record of criminal contact." Under section 1203.4, defendant, therefore, is entitled to have her guilty plea set aside, a plea of not guilty entered, and the case dismissed.

DISPOSITION

The judgment of the trial court denying defendant's motion is reversed. The matter is remanded to the trial court with directions to grant defendant's motion.

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MILLER
J.

We concur:

RAMIREZ
P. J.

KING
J.